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Q. Zuckerman  
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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE: B-187504, B-187505**

**DATE: December 21, 1976**

**MATTER OF: Pacific American Airlines**

**DIGEST:**

1. Where only reasonable interpretation of protest message is that protest is directed to determination by Small Business Administration that protester's competitors are small businesses, prior decision dismissing protest is affirmed.
2. Where protest is filed initially with agency, and protester receives notice of contract award notwithstanding protest, award constitutes adverse agency action and protester's failure to file protest with GAO not later than 10 working days of receipt of such notice renders protest untimely.

By letter dated October 27, 1976, Pacific American Airlines (Pacific) requests reconsideration of our decision Pacific American Airlines, B-187504, P-187505, October 13, 1976, 76-2 CPD 330, in which we declined to consider Pacific's protests because they concerned the small business size status of two proposed awardees, a matter which by statute is for resolution solely by the Small Business Administration (SBA).

Pacific now asserts that we misunderstood the protests in that they were not limited to the question of small business size status. According to Pacific, its protests went to both the size status and the responsiveness of its competitors' proposals, as evidenced by the final paragraph of its protests which stated:

"We believe a full and complete determination of [the proposed awardee's] status will disqualify it from award. We have previously filed written protest with MAC [Military Airlift Command] as to lack of responsiveness of [proposed awardee's] bid."

That paragraph followed another in which Pacific expounded only upon its objections to SBA's findings that its competitors were small businesses. Nowhere in the protests did Pacific indicate in what ways it considered the proposed awardees to be

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"nonresponsive" nor did it furnish this Office with a copy of its protest to MAC. Under the circumstances, we do not believe that the protests to this Office could reasonably be viewed as including the responsiveness matter previously protested directly to MAC. Our prior decision therefore is affirmed.

In its reconsideration request, Pacific states that it received a copy of one of the awarded contracts on October 18, 1976, and that the awarded contract differs from that which was advertised, with respect to primarily the weekly flight schedules and the allowable cabin load of the aircraft. Pacific states that the solicitation (No. F11626-76-R-0030) required use of 86 passenger aircraft while the awardee proposed and the contract provides for the use of 44 passenger aircraft. Pacific also states that the flight schedule set forth in the solicitation was revised to accommodate the awardee's use of the smaller aircraft.

We have informally obtained a copy of Pacific's protest to MAC which was dated August 10, 1976, and the MAC denial dated September 24, 1976. One aspect of that protest refers to the desirable environmental consequences of fewer take offs and landings that would result from the use of larger aircraft. We think it is therefore apparent that Pacific was aware of its competitor's proposal to use smaller planes at least as of the date of the protest to MAC, and that the protest to MAC incorporated that concern. Pacific acknowledges that it received notice of the award of a contract to its competitor on October 4, 1976. Our Bid Protest Procedures provide:

"If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office must be filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action \* \* \*."

Our Procedures further provide that notice of award of a contract may constitute initial adverse agency action. See 4 C.F.R. § 20.0(b); 52 Comp. Gen. 20 (1972). Since Pacific's objections regarding the size of its competitor's aircraft were filed with this Office on November 1, 1976, or more than 10 working days after October 4, 1976, the issue is untimely and not for consideration on the merits.

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With regard to the weekly airlift schedule, we note that it was not included in the solicitation as a basis for evaluation, but rather as an example of the potential scheduling, and understand informally from the Air Force that the winning proposal was evaluated on the basis of cost to the Government for the maximum quantities set forth in the solicitation, with the number of one way trips being doubled for the purpose of evaluation to take into account the smaller aircraft proposed. Thus, it appears that the schedule change was neither improper nor prejudicial to Pacific. Moreover, as indicated above, the schedule change was necessary in order to accommodate the use of the smaller aircraft and thus, this issue is directly related to the protester's objection to the use of those aircraft. As the protester is untimely with respect to its objection to the size of its competitor's aircraft, we believe its objection to the schedule change similarly is untimely.

Accordingly, we are closing our file without further action.

  
Deputy Comptroller General  
of the United States